



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1996

Mr. Richard Ybarra
Assistant Attorney General/Open Records Coord.
General Counsel Division, MC-018
Office of Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR96-0325

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38569.

The Office of the Attorney General (the "OAG") received an open records request for various records pertaining to an investigation of Falls County Sheriff Larry Pamplin. You state that much of the requested information has been released to the requestor. You seek to withhold certain other documents from disclosure either pursuant to section 552.101 of the Government Code or as judicial records not subject to the Open Records Act.¹

You state that the OAG obtained many of the records at issue pursuant to grand jury subpoenas. This office has previously held that where a district attorney, acting as an agent of the grand jury, gathers information pursuant to a subpoena, the information is deemed to be in the constructive possession of the grand jury despite the fact that the information is in the actual possession of the district attorney. Open Records Decision No. 411 (1984).

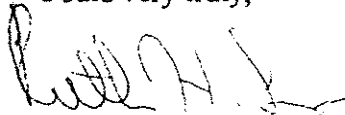
¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Assuming that the OAG did not possess a copy of the evidentiary materials prior to the issuance of the subpoenas, *see* Open Records Decision No. 513 (1988), we conclude that these materials held by the OAG are in the constructive possession of the Falls County Grand Jury. Because section 552.003(b) of the Government Code specifically excludes the judiciary, of which the grand jury is a part, from the provisions of the Open Records Act, we conclude that the subpoenaed materials are not subject to the provisions of Open Records Act and therefore need not be disclosed. For similar reasons we also conclude that the "summaries" of the subpoenaed materials that the OAG prepared in connection with its prosecution of the sheriff are in the constructive possession of the grand jury and therefore are not subject to the Open Records Act.²

You also seek to withhold certain income tax returns pursuant to section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Tax return information is specifically made confidential by federal law. *See* 26 U.S.C. § 6103. Accordingly, the OAG must withhold this information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 38569

Enclosures: Submitted documents

²Although you originally asserted that certain offense reports and seizure and forfeiture reports were excepted from required public disclosure because those documents were also gathered by the OAG pursuant to a grand jury subpoena, you informed this office in subsequent correspondence that those documents were not in fact ever obtained by the OAG.

³Because we resolve your request under sections 552.003 and 552.101 of the Government Code, we need not address your other arguments for withholding the requested documents.

cc: Ms. Ellen Roberts
P.O. Box 615
Rosebud, Texas 76570
(w/o enclosures)